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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,277	12/20/2001	Yvette L. Hammonds	17,704	6833

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KIMBERLY-CLARK WORLDWIDE, INC.  
401 NORTH LAKE STREET  
NEENAH, WI 54956

EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

12

DATE MAILED: 04/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/037,277

Applicant(s)

HAMMONDS ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 11-16, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-16, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The amendment filed 1-14-04 was not in compliance with 37 CFR 1.121, specifically the amendments to the paragraph after the title, to page 2, line 3, line 4 thereof and to claim 1, line 7. In all instances, the amendments were made compliant by the Examiner with red ink changes. The letters used in the drawings when described in the text were disposed between quotation marks. Such quotation marks also have been deleted by the Examiner in red ink.

#### ***Specification***

#### ***Drawings***

2. The drawings were received on 1-14-04. These drawings are not approved by the examiner. The replacement drawings did not include corrections of all the objections. No replacement sheet for Figures 1D' and 1E was filed. Figures 2A-4 were not photomicrographs as described. Note the PTO-948's.

3. The drawings are objected to because in Figures 2A-4, the descriptive text should be avoided. Also in the Figures the structure denoted 56 does not show an engagement member as described, i.e. see paragraph bridging pages 4-5. In Figure 1E, a line from the right 36 should be provided. In Figure 1D', the lines from 56 should extend to engagement members. Also it appears that the lines from the middle 72 and the lower 70 should be dashed to denote underlying structure. In Figures 5A-5C, the lines are very light. Also, no quotation marks should be used. A line from each numeral should be provided leading to the structure it denotes and if that

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structure underlies other structure the line should be dashed. In Figure 5A, where is 70', see paragraph at page 7, line 7? A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention of claims 8-9 and 11-14, e.g., the sheets, the adhesive, the fastener component of claim 9, if not already, see discussion infra, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

#### ***Description***

5. The disclosure is objected to because of the following informalities: 1) According to Applicants remarks claims 1-7 are intended to claim both a method and an apparatus which is referred to as a "system". In addition to the rejections infra with regard to claiming both in the claims, such use of the terminology "system" in the claims appears to be inconsistent to the use of such terminology in the remainder of the specification, i.e. in the remainder of the specification the term "system" is used to mean "product" or "apparatus" and the terminology "method" is used to define the series of steps. A consistent use of the term "system" should be set forth, see MPEP 608.01(o).

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Appropriate correction is required.

### *Claim Objections*

6. Claims 1-9, 11-16 and 18-19 are objected to because of the following informalities: in claim 1, line 8 is missing a word or words. On line 10, after “;”, --and-- should be inserted. On line 13, change “the first” to --each first--. This also applies to claim 15, line 10. On lines 19 and 24 of claim 1, “an” should be --the--. This also applies to claims 8, third to last line and claim 15, fourth to last line. In claim 2, line 4, claim 9, line 3 and claim 16, line 3, after “undergarment”, insert --when the fabric is--. In claims 2, 4-5, 11 and 12, line 1, “the” should be --each--. In claim 14, line 1, “can be used” should be -- is adapted--. Claim 15, line 13 and claim 19, line 2 are incomplete. Appropriate correction is required.

7. Applicant is advised that should claim 1 be found allowable, claim 3 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### *Claim Rejections - 35 USC § 112*

8. Claims 1-9, 11-16 and 18-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In regard to claims 1-7, these claims are indefinite because they claim both an apparatus and method steps of using the apparatus, see MPEP 2173.05(p)(II) and note Applicants remarks bridging pages 10-11 of the 1-14-04 response. Also, the description of the fasteners and the wings is incomplete, i.e. how are the components positioned with regard to the wings so as to be able to function as set forth on lines 18 et seq of claim 1, i.e. which surfaces are they on? All the same? Different? A positive structural antecedent basis for "the sanitary napkin" (line 8) should be set forth. This last rejection also applies to claim 15. In regard to claim 2, is the unengaged first fastener component and one of the fastener components claimed in claim 1 one and the same, i.e. how many components at a minimum are required? If so, on the third to last line, "an unengaged first fastener component" could be amended as --the first fastener component which is not interengaged--. In regard to claims 8 and 15-16, see discussion of claims 1 and 2 supra which applies here to similar language. In regard to claim 9, the description of the members is incomplete, i.e. how are the engagement members positioned with regard to the wings so as to be able to function as set forth in the last two lines. In regard to claims 16, and 18-19, are the components in these claims and the fasteners in claim 15 one and the same? Are the steps in these claims and one of the steps in claim 15 one and the same? In other words, how many fasteners and how many steps at a minimum are being claimed?

***Claim Rejections - 35 USC § 101***

9. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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10. Claims 1-7 are rejected under 35 U.S.C. 101 because the claims claim neither a “process” nor a “machine” but rather embrace or overlap two different statutory classes of invention set forth in 35 USC 101 which is drafted so as to set forth the statutory classes of invention in the alternative only, see MPEP 2173.05(p)(II) and note Applicants remarks in the paragraph bridging pages 10-11 of the 1-14-04 response.

***Claim Language Interpretation***

11. Claims 1, 8 and 15 are interpreted to require a pair of first fastener components one of each being positioned on one of each of the wings and a pair of cooperating fastener components one of each being positioned on one of each of the wings. It is noted that “system” as set forth in claims 1-7, due to its ambiguity, see discussion supra, is interpreted as claiming a method. Likewise, the overlapping and temporarily engaging steps in claims 1 and 15 are interpreted as being performed by the wearer rather than the manufacturer.

***Claim Rejections - 35 USC § 102***

12. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

13. Claims 8-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Hammons et al ‘484.

In regard to claims 8 and 10-14, see Figures 1-10, i.e. the topsheet is 22, the backsheet is 26, the core is 24, the adhesive and the peel strip are 58-59, the first and second wings are 34, 36, see also paragraphs 84-87 of Hammons et al, i.e. can be of liquid permeable material or liquid

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impermeable material, the fastener components are 102, 104, see also paragraphs 88-99, 107 and 108, and thereby Scripps '724 at col. 12, lines 36-42, and thereby Noel et al '520 at, e.g., Figures, col. 6, lines 48-51 and col. 8, lines 3-9, i.e. nonwoven pattern unbonded loop material. See also, Figures 25-28 and paragraph 142. With regard to the last subsection of claim 8 which recites capabilities, function or properties of the claimed structure, the Hammons et al device includes all the claimed structure. Therefore there is sufficient factual basis for one to conclude that the capabilities, functions and properties of such claimed structure is also inherent in the same structure of Hammons et al, see MPEP 2112.01.

In regard to claim 9, see also Figures 6-8 and paragraphs 121-123, i.e. the fastener component is the one fastener 102, 104 directly adjacent exterior of the undergarment. It is noted that both components, i.e. the hooks and loops, include engagement members, see page 9, lines 11-12 of the instant specification. Therefore the Hammons et al device includes all the claimed structure. Claim 9 recites function or capability of such structure on lines 2-3. However, since Hammons includes the same structure, there is sufficient factual basis for one to conclude that the capabilities, functions and properties of such claimed structure is also inherent in the same structure of Hammons et al, see MPEP 2112.01.

14. Claims 8-11 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Bien '929, and thus Mattingly '047.

With regard to claims 8, 10-11 and 14, see Figures of Bien, i.e. topsheet is 28, the backsheet is 30, the core is 32, the adhesive and peel strip are 34, 36 and the flaps and fastener components are set forth at col. 7, lines 29-59, and thereby Mattingly '047 at col. 6, line 44-col. 7, line 5, col. 2, lines 17-32 and col. 8, lines 9-41. It is noted that the portions of Mattingly are



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considered to teach that the cohesive structure in Figure 10 could be adhesive or VELCRO instead, i.e. the fastener component is the one fastener directly adjacent exterior of the undergarment. It is noted that both components, i.e. the hooks and loops of the VELCRO, include engagement members, note page 12, lines 11-12 of the instant specification. With regard to the last subsection of claim 8 which recites capabilities, function or properties of the claimed structure, the Hammons et al device includes all the claimed structure. Therefore there is sufficient factual basis for one to conclude that the capabilities, functions and properties of such claimed structure is also inherent in the same structure of Hammons et al, see MPEP 2112.01.

In regard to claim 9, see portions of references cited in the preceding paragraph, i.e. the fastener component is the one fastener directly adjacent exterior of the undergarment. It is noted that both components, i.e. the hooks and loops of the VELCRO, include engagement members, note page 9, lines 11-12 of the instant specification. Therefore, the Bien device includes the claimed structure. Claim 9 recites function or capability of such structure on lines 2-3. However, since Bien includes the same structure, there is sufficient factual basis for one to conclude that the functions or capability of such claimed structure is also inherent in the same structure of Bien, see MPEP 2112.01.

### ***Claim Rejections - 35 USC § 103***

15. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

16. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bien '929 in view of Leak et al '041.

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Applicant claims the cooperating fastener component being of nonwoven loop material and a pattern unbonded material whereas Bien only teaches that such is a loop material. However, see Leak et al, col. 1, lines 40-50 and col. 8, lines 55-59 and abstract. To employ a pattern unbonded nonwoven loop material as taught by leak et al on the Bien device as the loop material would be obvious to one of ordinary skill in the art in view of the recognition that Bien teaches a situation in which hook and loop fasteners have been employed and that such would also be economically efficient which would be desirable in any disposable article and the article of Bien being disposable.

***Patentably Distinguishable Subject Matter***

17. Claim 1-7, as best understood, see discussion supra, and claims 15-19 patentably distinguish over the prior art.

***Response to Arguments***

18. Applicants remarks on pages 10-11 with regard to the matters of form have been considered but are either deemed moot in that the issue has not been reraised, or is deemed not persuasive for the reasons set forth supra. Applicants remarks with respect to the 102 rejections have been considered but are deemed not persuasive. Specifically Applicants position is that since there is more than one embodiment and all the embodiments do not include mechanical fasteners, all the embodiments taught by the references do not necessarily possess the characteristics of the claimed invention and thereby the reference does not teach the claimed invention. The Examiner is unaware of any authority which requires all embodiments disclosed

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by the applied prior art necessarily possess the characteristics of the invention of the claims. If one embodiment disclosed by the prior art reads on the claims the application of the prior art is proper. Applicants do not argue that there is no embodiment taught by the references which read on the claims. Applicants remarks with respect to the combination of Bien and Leak are considered not persuasive in light of the disclosure of Leak at col. 8, lines 55-59 and the claim language which does not require that the loop material only forms a portion of each wing.

### ***Conclusion***

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to the claims and specification.


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20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617.

The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
March 26, 2004